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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,313	08/20/2004	Darryel Green		1734

7590  
DARRYEL GREEN  
1632 SPL NW  
BIRMINGHAM, AL 35215

11/02/2007

EXAMINER
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WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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11/02/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/800,313

**Applicant(s)**

GREEN, DARRYEL

**Examiner**

Steven L. Weinstein

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins (4,416,906) in view of Commercial Appeal (10/14/98), VanNortwick (5,225,224), Product Alert (10/21/91), Atkinson (5,705,212), and Blackwell et al (5,876,811). The claims are also rejected using Commercial Appeal as the primary reference further in view of Watkins (4,416,906), VanNortwick (5,225,224), Product Alert (10/21/91), Atkinson (5,705,212), and Blackwell et al (5,876,811).

It is first noted that an applicant's invention is reviewed for patentability by comparing the claim or claims in an applicant's specification versus what the references taken as a whole teaches. It is not the specification or the abstract that is compared to the prior art references, only the claims. Any element or concept that an applicant wishes the Office to consider must be in the claims. However, an applicant cannot add new matter to either a specification or claims if the specification or claims did not contain the subject matter at the time of an applicant's filing date; which in this case, is 8/20/04. In regard to claim 1, claim 1 recites grits in a serving bowl. Watkins discloses that it was conventional to provide all types of foods in a (mercantile) serving bowl (e.g., #24). The various foods are listed in col. 5, para.5 and include rice, beans pasta, soups, etc. Claim 1 differs from Watkins in the recitation that the food is grits. Since Watkins discloses all types of foods can be provided in a serving bowl, to substitute one

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conventional food for another conventional food; i.e., grits for the foods listed in Watkins, would have been an obvious matter of choice. That is, Watkins is considered to be a general teaching of placing foods, any conventional food, in the serving bowl/container. It is noted that the claim does not recite in the claim that either the grits are frozen or the bowl is microwavable. Even if the claim was amended to recite these two characteristics, it is noted that Watkins discloses that the bowl is microwavable and can be used to contain (and reheat) all types of frozen foods, and Commercial Appeal can be relied on to teach it was conventional to prepare cooked grits and freeze cooked grits for later use, (which is applicant's intended objective as well). VanNortwick can be relied on as further evidence of the conventionality of freezing and packaging a grits product. Product Alert is relied on as further evidence of a frozen breakfast cereal, i.e., frozen oatmeal marketed in a microwavable tub. Atkinson and Blackwell are relied on as further evidence of the conventionality of providing a variety of frozen food products in microwavable serving bowls.

Employing Commercial Appeal as the primary reference, since Commercial Appeal discloses storing (frozen) grits, it would have been obvious to package the grits for storage in a (microwavable) bowl as evidenced by Watkins who discloses storing all types of (frozen) products in (microwavable) bowls.

As one can see from the rejection above, and as directed by the U.S. Congress through its laws (and ultimately as set forth in the U.S. Constitution), the USPTO, in making a determination of patentability, must consider what the body of references (termed the prior art) teaches one of ordinary skill in the art, and then compare this to

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the claimed invention. Thus, under 35USC103, the USPTO can combine references. An invention, to be patentable, must be novel under 35USC102. This means that no single reference can teach all of the claimed invention. However, to be patentable, the claim(s) must also be unobvious over the art taken as a whole under 35USC103. Both conditions must be met; novelty under 35USC102, and unobviousness under 35USC103.

Applicant now has two choices. Upon reviewing this Office action, and the references relied upon in the rejection, applicant may agree with the Office position and thus choose to end the prosecution of this application by either not responding to this Office action within the Statutory Period set on the accompanying cover sheet, thus abandoning the application, or by filing a Letter of Express Abandonment, stating that applicant expressly abandons the application.

The other choice is that applicant may choose to continue prosecution of this application by filing a response within the Statutory Period noted above. If applicant chooses to respond, note the following. Applicant must request reconsideration in writing, and must distinctly and specifically point out the supposed errors in the Office action and its conclusion of obviousness. The applicant must respond to every ground of objection and rejection in the prior Office action specifically addressing any reference(s) applied against the claim(s) and any combination of references applied against the claim(s). Applicant's response must appear throughout to be a bona fide attempt to advance the case to final action. The mere allegation that the Office has erred will not be received as a proper reason for such reexamination or reconsideration.

If applicant chooses to respond, applicant may file an amendment to the specification and/or claims. However, the amendment cannot contain New Matter, which is defined as subject matter not necessarily and inherently supported by the specification and claims as originally filed on the filing date given to the applicant by the Office, which is 8/20/04. In amending an application in response to a rejection, applicant must clearly point out why applicant thinks the amended claims are patentable in view of the references applied and also point out where there is support for the amended language in the specification as originally filed.

The remainder of the references cited on the PTO form are cited as pertinent art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER  
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